

engaging means including first and second opposed jaws for grasping, securing, and occluding body tissue and conduits. The claims as amended are set forth in the Appendix.

U.S. Patent No. 5,916,193 to *Stevens et al.* discloses a venting catheter for withdrawing blood and other fluids from a patient's heart to facilitate decompressing the heart during cardioplegic arrest and cardiopulmonary bypass. The venting catheter is configured to be introduced into a peripheral vein and intra-luminally advanced through the right side of the heart and into the pulmonary artery. A flow-directing means is provided to facilitate guiding the catheter into the pulmonary artery by being carried by blood flow through the heart.

The Office Action alleges that *Stevens* teaches a malleable shaft and an actuating member. The Office Action alleges that the shaft member is the "partitioning device 320" of *Stevens* and the first tube is the "shaft 322" of *Stevens*. Notoriously absent from any identification is the alleged "actuating means." For this reason alone, the rejection of claims 1 and 3 - 12 under *Stevens* should be withdrawn.

Further, the Office Action alleges that the proximal end of the "shaft 322" of *Stevens* is "adapted to be coupled to the handle assembly" and the distal end of the "shaft 322" of *Stevens* is "adopted to be coupled to the tissue engaging means." Neither the alleged "handle assembly" nor the alleged "tissue engaging means" are identified. For this reason alone, the rejection of claims 1 and 3 - 12 under *Stevens* should be withdrawn.

Moreover, what is described in *Stevens* is an endovascular device for partitioning the ascending aorta. A "polymeric balloon 330," not a "tissue engaging means," is what "is mounted to shaft 322 near distal end 324." (Column 24, lines 8 - 12). A "triple-arm adapter 364," not a "handle assembly" is what is "attached to the proximal end 326 of shaft 322." (Column 29, lines 33 - 34). For all these reasons, the rejection of claims 1 and 3 - 12 under *Stevens* should be withdrawn.

U.S. Patent No. 5,643,303 to *Donahue* discloses a surgical instrument with an outer member having at least one opening in a distal region and a hollow inner member disposed within the outer member for transmitting force applied to the proximal end to move a cutting implement disposed at the distal end. The cutting implement is constructed and adapted to perform a cutting function at the opening in the outer member. The hollow inner member is substantially flexible between its proximal and distal ends. The outer member is provided with

a predetermined flexibility and rigidity such that the outer member is provided with sufficient flexibility to be manually bent by a surgeon during an operation, and provided with sufficient rigidity to retain such bend during the continued performance of the operation with the surgical instrument.

With the present amendments, claims 13 and 15 - 21 have been amended to specify that the tissue engaging means including first and second opposed jaws for grasping, securing, and occluding body tissue and conduits. Thus, it is respectfully submitted that U.S. Patent No. 5,643,303 to *Donahue* is no longer applicable.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

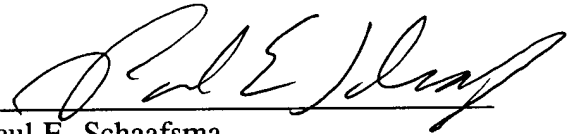
Respectfully submitted,

Date

2 October 2002

FOLEY & LARDNER
One IBM Plaza, Suite 3300
330 North Wabash
Chicago, Illinois 60611-3608
Telephone: 312.755.2610
Facsimile: 312.297.1925

By



Paul E. Schaafsma
Registration No. 32,664
Attorney for Applicant



APPENDIX

1. (Three Times Amended) A malleable shaft member for a surgical device having a tissue engaging means and a handle assembly, and an actuating means connecting the handle assembly and the tissue engaging means for actuating the tissue engaging means, the shaft member comprising:

a first tube made of a malleable material and having a proximal end, a distal end and a longitudinal axis, the proximal end of the first tube adapted [adopted] to be coupled to the handle assembly, the distal end of the first tube adapted [adopted] to be coupled to the tissue engaging means, the actuating means adapted to extend [extending] axially through the first tube, the first tube configured to be kink resistant, fatigue resistant, and to bend about some bending radius in response to a bending moment applied to the first tube, the bending moment applied to the first tube ranging between about 6 in-lbs to 27 in-lbs.

8. (Once Amended) The shaft member of claim 1, wherein the proximal end of the first tube is adapted to be removably coupled to the handle assembly.

9. (Once Amended) The shaft member of claim 1, wherein the distal end of the first tube is adapted to be removably coupled to the tissue engaging means.

RECEIVED

NOV - 1 2002

13. (Twice Amended) A surgical device comprising:
a tissue engaging means including first and second opposed jaws for grasping, securing, and occluding body tissue and conduits;

TECHNOLOGY CENTER R3700

a handle assembly;
an actuating means connecting the handle assembly and the tissue engaging means for actuating the tissue engaging means; and

a shaft member made of a malleable material and having a proximal end, a distal end and a longitudinal axis, the proximal end of the shaft member coupled to the handle assembly, the distal end of the shaft member coupled to the tissue engaging means, the actuating means extending axially through the shaft member, the shaft member configured to be kink resistant, fatigue resistant, and to bend about some bending radius in response to a bending moment applied to the shaft member, the bending moment applied to the shaft member ranging between 6 in-lbs to 27 in-lbs.